

**Illinois Department of Revenue
Regulations**

| |
|--|
| Title 86 Part 450 Section 450.10 Nature and Rate of Tax |
|--|

**TITLE 86: REVENUE
CHAPTER I: DEPARTMENT OF REVENUE**

**PART 450
CIGARETTE USE TAX ACT**

Section 450.10 Nature and Rate of Tax

- a) The Cigarette Use Tax is imposed upon the privilege of using cigarettes in this State, and the tax rate is 29 mills per cigarette so used or 58 cents on a package of 20 cigarettes; except that, beginning July 1, 2002, the tax rate is 49 mills per cigarette or 98 cents on a package of 20 cigarettes.
- b) The tax must be collected by a distributor maintaining a place of business in this State or a distributor authorized by Section 7 of the Act to hold a permit to collect the tax, and the amount of the tax shall be added to the price of the cigarettes sold by the distributor and must be stated on the invoice as a separate item from the selling price of the cigarettes except when the purchaser is a Federal or foreign government agency or instrumentality (see Section 450.50 of this Part).
- c) Distributors who are not subject to the Cigarette Tax Act [35 ILCS 130] (the Act), but who are subject to the Cigarette Use Tax Act [35 ILCS 135], must remit, to the Department of Revenue (the Department), the amount of Cigarette Use Tax to be collected by them through the purchase and affixation of tax stamps or meter impression units (where the use of meters is authorized by the Department) to any original package of cigarettes before delivering the cigarettes (or causing them to be delivered) in this State to any purchaser, or (in the case of manufacturers of cigarettes in original packages that are contained inside a sealed transparent wrapper) by imprinting the language to be prescribed by the Department on the original package of cigarettes beneath the outside wrapper.
 - 1) *On and after July 22, 1999, no stamp or imprint may be affixed to, or made upon, any package of cigarettes unless that package complies with all requirements of the federal Cigarette Labeling and Advertising Act, 15 USC 1331 and following, for the placement of labels, warnings, or any other information upon a package of cigarettes that is sold within the United States. Under the authority of Section 6 of the Cigarette Use Tax Act [35 ILCS 135], the Department shall revoke the license of any distributor that is determined to have violated this subsection (c)(1). A person may not affix a stamp on a package of cigarettes, cigarette papers, wrappers, or tubes if that individual package has been marked for export outside the United States with a label or notice in compliance with Section 290.185 of Title 27 of the Code of Federal Regulations. It is not a defense to a proceeding for*

violation of this subsection that the label or notice has been removed, mutilated, obliterated, or altered in any manner. (Section 3 of the Cigarette Use Tax Act)

- 2) On and after August 15, 1999, packages of cigarettes, cigarette papers, wrappers, or tubes stamped or imprinted in a manner not in accordance with subsection (c)(1) and found in the possession of a distributor create a rebuttable presumption that the packages of cigarettes, cigarette papers, wrappers, or tubes were stamped or imprinted in violation of the Cigarette Use Tax Act.
- 3) On and after September 1, 1999, packages of cigarettes, cigarette papers, wrappers, or tubes stamped or imprinted in a manner not in accordance with subsection (c)(1) and found in the possession of a retailer create a rebuttable presumption that the packages of cigarettes, cigarette papers, wrappers, or tubes were stamped or imprinted by the distributor from whom they were obtained in violation of the Cigarette Use Tax Act.
- 4) *On and after June 13, 2000, no stamp or imprint may be affixed to, or made upon, any package of cigarettes that:*
 - A) *bears any statement, label, stamp, sticker, or notice indicating that the manufacturer did not intend the cigarettes to be sold, distributed, or used in the United States, including but not limited to labels stating "For Export Only", "U.S. Tax Exempt", "For Use Outside U.S.", or similar wording; or*
 - B) *does not comply with:*
 - i) *all requirements imposed by or pursuant to federal law regarding warnings and other information on packages of cigarettes manufactured, packaged, or imported for sale, distribution, or use in the United States, including but not limited to the precise warning labels specified in the federal Cigarette Labeling and Advertising Act, 15 USC 1333; and*
 - ii) *all federal trademark and copyright laws;*
 - C) *is imported into the United States in violation of 26 USC 5754 or any other federal law or implementing federal regulations;*
 - D) *the person affixing the stamp or imprint otherwise knows or has reason to know the manufacturer did not intend to be sold, distributed, or used in the United States;*
 - E) *for which there has not been submitted to the Secretary of the U.S. Department of Health and Human Services the list or lists of the ingredients added to tobacco in the manufacture of the cigarettes required by the federal Cigarette Labeling and Advertising Act, 15 USC 1335a; or*

- F) *has been altered, prior to sale or distribution to the ultimate consumer, so as to remove, conceal, or obscure:*
- i) *any statement, label, stamp, sticker, or notice described in 86 Ill. Adm. Code 440.50(k)(1); or*
 - ii) *any health warning that is not specified in, or does not conform with the requirements of, the federal Cigarette Labeling and Advertising Act, 15 USC 1333 (Section 3-10 of the Act).*
- 5) On and after July 15, 2000, packages of cigarettes, cigarette papers, wrappers, or tubes stamped or imprinted in a manner not in accordance with subsection (c)(4) of this Section and found in the possession of a distributor create a rebuttable presumption that the packages of cigarettes, cigarette papers, wrappers or tubes were stamped or imprinted in violation of the Cigarette Use Tax Act.
- 6) On and after July 31, 2000, packages of cigarettes, cigarette papers, wrappers or tubes stamped or imprinted in a manner not in accordance with subsection (c)(4) of this Section and found in the possession of a retailer create a rebuttable presumption that the packages of cigarettes, cigarette papers, wrappers or tubes were stamped or imprinted by the distributor from whom they were obtained in violation of the Cigarette Use Tax Act.
- 7) *On and after June 13, 2000, on the first business day of each month, each person licensed to affix the State tax stamp to cigarettes shall file with the Department, for all cigarettes imported into the United States to which the person has affixed the tax stamp in the preceding month.*
- 8) *A copy of:*
- A) *the permit issued pursuant to the Internal Revenue Code, 26 USC 5713, to the person importing the cigarettes into the United States allowing the person to import the cigarettes; and*
 - B) *the customs form containing, with respect to the cigarettes, the internal revenue tax information required by the U.S. Bureau of Alcohol, Tobacco and Firearms.*
- 9) *A statement, signed by the person under penalty of perjury, which shall be treated as confidential by the Department and exempt from disclosure under the Freedom of Information Act, identifying the brand and brand styles of all such cigarettes, the quantity of each brand style of such cigarettes, the supplier of such cigarettes, and the person or persons, if any, to whom such cigarettes have been conveyed for resale.*
- 10) *In addition to the statement required in subsection (c)(9) of this Section, a separate statement, signed by the individual under penalty of perjury, which shall not be treated as confidential or exempt from disclosure, separately identifying the brands and brand styles of such cigarettes.*

- 11) *In addition to the statement required in subsection (c)(9) and (c)(10) of this Section, a separate statement, signed by an officer of the manufacturer or importer under penalty of perjury, certifying that the manufacturer or importer has complied with:*
- A) *the package health warning and ingredient reporting requirements of the federal Cigarette Labeling and Advertising Act, 15 USC 1333 and 1335a, with respect to such cigarettes; and*
 - B) *the provisions of Exhibit T of the Master Settlement Agreement entered in the case of People of the State of Illinois v. Philip Morris, et al. (Circuit Court of Cook County, No. 96-L13146), including a statement indicating whether the manufacturer is, or is not, a participating tobacco manufacturer within the meaning of Exhibit T.*
- 12) *The Department may revoke or suspend the license or licenses of any distributor, in the manner provided in Section 6 of the Cigarette Use Tax Act, if the Department determines that the distributor knew or had reason to know that the distributor was committing any of the acts prohibited in subsection (c)(4) of this Section or had failed to comply with any of the requirements of subsection (b) of Section 3-10 of the Cigarette Use Tax Act. In addition, the Department may impose on the distributor a civil penalty in an amount not to exceed the greater of 500% of the retail value of the cigarettes involved or \$5,000. Cigarettes acquired, held, owned, possessed, transported in, imported into, or sold or distributed in this State in violation of subsection (c)(4) of this Section shall be subject to seizure and forfeiture whether the violation is knowing or otherwise. (Section 3-10 of the Act)*
- d) At the time of purchasing stamps from the Department or any person authorized by the Department, when purchase of the stamps is required by the Cigarette Use Tax Act or at the time when the tax that he has collected is remitted by a distributor to the Department without the purchase of stamps from the Department or any person authorized by the Department when that method of remitting the tax that has been collected is required or authorized by the Act, the distributor will be allowed a discount during any year commencing July 1 and ending the following June 30. The discount shall be equal to 1.75% of the amount of the tax payable under the Act up to and including the first \$3,000,000.00 paid by the distributor to the Department during any year and 1.5% of the amount of any additional tax paid by the distributor to the Department during any such year.
- e) This discount is to cover the distributor's cost of collecting the tax.
- f) Two or more distributors that use a common means of affixing revenue tax stamps or that are owned or controlled by the same interests shall be treated as a single distributor for the purpose of computing the discount.
- g) *On and after December 1, 1985 and until July 1, 2003, the Department shall allow a distributor 30 days in which to make final payment of the amount to be paid for such*

stamps, by allowing the distributor to make payment for the stamps at the time of purchasing them with a draft which shall be in such form as the Department prescribes (i.e. a standard bank draft which the distributor may post-date), and which shall be payable within 30 days thereafter: Beginning January 1, 2003, such draft shall be payable by means of electronic funds transfer, as provided in 86 Ill. Adm. Code 750. A distributor's failure to pay any such draft, when due, shall also make such distributor automatically liable for a penalty equal to 25% of the amount of such draft. (Section 3 of the Act)

- h) *On and after December 1, 1985 and until July 1, 2003, distributors making payment for stamps at the time of purchase by draft as explained in subsection (g) shall first file with the Department, and receive the Department's approval of, a bond (in a form provided for in this subsection), which is in addition to the bond required under Section 4 of the Act, payable to the Department in an amount equal to 100% of such distributor's average monthly tax liability under the Act during the preceding calendar year or \$750,000, whichever is less. The bond shall be joint and several and shall be in the form of a surety company bond or it may be in the form of a bank certificate of deposit or bank letter of credit. The bond shall be conditioned upon the distributor's payment of the amount of any 30-day draft which the Department accepts from that distributor for the delivery of stamps to that distributor under the Act. Prior continuous compliance taxpayers, as defined in Section 1 of the Act, are exempt from the bond requirements noted in this subsection. (Section 3 of the Act) For additional information concerning the exemption for prior continuous compliance taxpayers, see Section 3 of the Act.*
- i) *Beginning January 1, 2003 and through June 30, 2003, any taxpayer choosing not to make payment of tax by means of a draft payable within 30 days as provided for in subsection (g) and who has an annual tax liability of \$200,000 or more shall make all payments of that tax by means of electronic funds transfer, as provided in 86 Ill. Adm. Code 750. On and after July 1, 2003, all payment for revenue tax stamps must be made by means of electronic funds transfer. (Section 3 of the Act)*
- j) *The Cigarette Use Tax collected by a distributor who is liable to collect and remit a like amount of tax with respect to the same cigarettes under the Cigarette Tax Act need not be remitted to the Department under the Cigarette Use Tax Act. In other words, the amount which the distributor is liable to collect and remit under the Cigarette Tax Act with respect to particular cigarettes is offset against the amount collected from the purchaser by the distributor under the Cigarette Use Tax Act with respect to the same cigarettes. Sections 3 and 10 of the Cigarette Use Tax Act permit this offset in order to avoid the double remittance of tax to the State on the same transactions in the case of sales of cigarettes in Illinois.*
- k) *In those instances in which a distributor is required to affix tax stamps or meter impressions to original packages of cigarettes under the Cigarette Use Tax Act, rather than under the Cigarette Tax Act, the provisions of the Part relating to the Cigarette Tax Act (86 Ill. Adm. Code 440) shall apply and are incorporated herein by reference.*
- l) *Where cigarettes are acquired for use in this State without Illinois tax stamps being affixed to the original packages thereof and without authorized tax imprints placed underneath the sealed transparent wrapper of the original packages, the user is required to remit the*

amount of the Cigarette Use Tax directly to the Department. Before January 1, 2002, the tax shall be remitted to the Department by the user within 3 days after he acquires the cigarettes. On and after January 1, 2002, the tax shall be remitted to the Department by the user within 30 days after he acquires the cigarettes.

- m) *The Department may refuse to sell cigarette stamps to any person who does not comply with the provisions of the Cigarette Use Tax Act. (Section 3 of the Act)*

(Source: amended at 28 Ill. Reg. 3911, effective February 13, 2004)